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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 || JUSTIN CODY HARPER.

Case No.: CV23-00695 SSS (KK)
Judge: Hon. Sunshine Sykes

12

Plaintiff,

13 | VS.

14 CITY OF REDLANDS, REDLANDS
15 POLICE DEPARTMENT, POLICE
16 OFFICER KOAHOU, and DOES 1
through 10 Inclusive,

Defendants.

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION IN LIMINE
NO. 2 TO EXCLUDE POST-
SHOOTING AGENCY FINDINGS**

Final Pre-trial Conference

Date: April 4, 2025

Date: April 4, 2014
Time: 1:00 pm

Courtroom: 2

Trial

Date: April 21, 2025

Time: 9:00 am

Courtroom: 2

Complaint Filed: April 19, 2023

1 **I. INTRODUCTION**

2 This action stems from an officer-involved shooting that occurred on
3 September 9, 2021 after Plaintiff, in a stolen vehicle, led Redlands Officer Koahou
4 on a high-speed pursuit, crashed the stolen vehicle, and carjacked a second vehicle.
5 In his Motion in Limine No. 2, Plaintiffs ask this Court to exclude (1) Any
6 evidence, testimony, argument, or reference at trial to the District Attorney's
7 conclusion that Officer Koahou's use of deadly force against Mr. Harper was
8 justified, reasonable, and/or not criminal; (2) Any evidence, testimony, argument,
9 or reference at trial to the District Attorney's decision not to press charges against
10 Officer Koahou, including any reference (whether implicit or explicit) to the fact
11 that the District Attorney reviewed the shooting incident; (3) Any evidence,
12 testimony, argument, or reference at trial to the City of Redlands' findings that
13 Officer Koahou's use of deadly force against Mr. Harper was reasonable, justified,
14 and/or within policy. Defendants do not oppose the exclusion of categories (1) or
15 (2).

16 However, category (3) is overbroad and seeks to exclude relevant and
17 admissible evidence. The City of Redlands' findings that Officer Koahou's use of
18 deadly force against Mr. Harper was reasonable, justified, and/or within policy are
19 relevant because it would support the fact that Officer Koahou acted based on his
20 training and experience and pursuant to departmental policy, and that Officer
21 Koahou perceived an objective deadly threat from Harper's actions leading to his
22 defensive reaction. With the appropriate instruction, the jury is capable of making
23 a determination based on the facts and the evidence presented, and not based solely
24 on the findings of the law enforcement agency. Thus, the evidence is more
25 probative than it is prejudicial. Accordingly, Defendants respectfully request
26 Plaintiff's Motion in Limine No. 2 be denied in part.

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1 **II. EVIDENCE THAT OFFICER KOAHOU'S ACTIONS WERE**
2 **WITHIN POLICY AND BASED ON HIS TRAINING IS RELEVANT**
3 **AND WILL ASSIST THE JURY IN DETERMINING KEY ISSUES**

4 Relevancy is very broadly defined. "Evidence is relevant if (a) it has any
5 tendency to make a fact more or less probable than it would be without the
6 evidence; and (b) the fact is of consequence in determining the action." Fed. R.
7 Evid. 401. District courts have broad discretion in determining whether evidence is
8 relevant for discovery purposes. *See Survivor Media, Inc. v. Survivor Prods.*, 406
9 F.3d 625, 635 (9th Cir. 2005).

10 Harper seeks to exclude any evidence, testimony, argument, or reference to
11 Defendant City of Redlands' findings that Officer Koahou's use of deadly force
12 against Mr. Harper was reasonable, justified, and/or within policy. However,
13 information regarding policies and practices of the Redlands Police Department,
14 and the Department's findings concerning Officer Koahou's actions relating to
15 those policies and practices, are relevant and would assist the jury in determining
16 whether Officer Koahou's actions were objectively reasonable.

17 The Department's findings related to Officer Koahou's actions and their
18 compliance with policy are particularly relevant because it would allow the jury to
19 understand the policies that are related to the use of force and how the Department
20 assessed Officer Koahou's use of force based on those policies. The central issue is
21 whether Officer Koahou's actions were objectively reasonable, and the applicable
22 policies and how Officer Koahou's actions measured up to the objective standards
23 of their own Department are highly probative of the issue. Moreover, Harper's
24 argument that such evidence irrelevant because such investigation happened after
25 the disputed incident is improper because, like the jury in this matter, the
26 Department was able to put itself in the shoes of a reasonable officer during the
27 incident and did not make its investigation in contradiction to the *Graham*
28 reasonableness standard.

1 Defendants believe that with proper instruction, evidence of findings and
2 conclusions related to Departmental policies would benefit the jury and assist in
3 their evaluation of the evidence. Further, any prejudicial effect can be alleviated
4 through a proper jury instruction. *United States v. Hollis*, 490 F.3d 1149, 1153 (9th
5 Cir. 2007); *see also Blount v. Bos. Sci. Corp.*, 2019 U.S. Dist. LEXIS 142360 at *6
6 (E.D. Cal. 2019) [finding that courts should consider the risks of prejudice and jury
7 confusion to be alleviated by utilizing cautionary jury instructions and controlling
8 the manner in which the parties' claims and defenses are submitted to the jury for
9 deliberation].

10

11 **III. EVIDENCE REGARDING AGENCIES' FINDINGS AND**
12 **CONCLUSIONS MAY NOT BE CONSIDERED HEARSAY**

13 Harper's Motion involves considerations which should not be decided in the
14 procedural posture of their Motion in Limine and should therefore be denied.
15 Specifically, there are some circumstances under which the conclusions and/or
16 findings of an agency may be admissible at trial. For example, if a police practices
17 expert cites such potential hearsay evidence as one of the bases of his expert
18 opinions in the case, such conclusions may be admissible from that expert witness
19 as a foundation for his opinions. *See generally* Fed. R. Evid. 702; *United States v.*
20 *Lundy*, 809 F.2d 392, 395-396 (7th Cir. 1987). Similarly, if a witness (expert or
21 otherwise) erroneously contends that Officer Koahou's conduct during the
22 shooting was criminal or a violation of the policy of the Redlands Police
23 Department, such conclusions by the Department. *See, e.g.,* Fed. R. Evid. 801(d),
24 803(6), 806, 807.

25 Indeed, portions of investigative reports otherwise admissible under Federal
26 Rule of Evidence 803(8)(C) are not inadmissible merely because they state a
27 conclusion or opinion, as long as the conclusion is based upon factual investigation
28 and satisfies the Rules' trustworthiness requirements. *See Beech Aircraft Corp. v.*

¹ *Rainey*, 488 U.S. 153, 169 (1988). Thus, Harper's blanket request for exclusion is
² improper and should be denied. *Sperberg v. The Goodyear Tire and Rubber CO.*,
³ 519 F.2d 708, 712 (6th Cir. 1975); *Wilkins v. Kmart Corp.*, 487 F.Supp.2d 1216,
⁴ 1218 (D. Kan. 2007) [the court "is almost always better situated during the actual
⁵ trial to assess the value and utility of the evidence].

7 || IV. CONCLUSION

8 For all of the foregoing reasons, Defendants respectfully request the Court
9 deny Plaintiffs' Motion in Limine No. 2, in part.

Dated: March 20 2025

Respectfully Submitted,
JONES MAYER

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Redlands and Officer Koahou